

## § 890.1070

## 5 CFR Ch. I (1–1–09 Edition)

during the contest, the provider must inform the debarring official in writing of:

(1) Any existing, proposed, or prior exclusion, debarment, penalty, assessment, or other sanction that was imposed by a Federal, State, or local government agency, including any administrative agreement that purports to affect only a single agency; and

(2) Any current or prior criminal or civil legal proceeding that was based on the same facts as the penalties and assessments proposed by OPM.

(c) *In-person appearance.* A provider may request a personal appearance (in person, by telephone conference, or through a representative) to provide testimony and oral arguments to the debarring official.

### § 890.1070 Deciding contests of proposed penalties and assessments.

(a) *Debarring official reviews entire administrative record.* After the provider submits the information and evidence authorized or required by § 890.1069, the debarring official shall review the entire official record to determine if the contest can be decided without additional administrative proceedings, or if an evidentiary hearing is required to resolve disputed material facts.

(b) *Previously determined facts.* Any facts relating to the basis for the proposed penalties and assessments that were determined in prior due process proceedings are binding on the debarring official in deciding the contest. “Prior due process proceedings” are those set forth in § 890.1025(a)(1) through (4).

(c) *Deciding the contest without further proceedings.* To decide the contest without further administrative proceedings, the debarring official must determine that:

(1) The preponderance of the evidence in the administrative record as a whole demonstrates that the provider committed a sanctionable violation described in § 890.1061; and

(2) The evidentiary record contains no *bona fide* dispute of any fact material to the proposed financial sanction. A “material fact” is a fact essential to determining whether a provider committed a sanctionable violation for

which penalties and assessments may be imposed.

(d) *Final decision without further proceedings.* If the debarring official determines that paragraphs (c)(1) and (c)(2) of this section both apply, a final decision may be issued, imposing financial sanctions in amounts not exceeding those proposed in the notice to the provider described in § 890.1066.

(e) *Insufficient evidence.* If the debarring official determines that a preponderance of the evidence does not demonstrate that the provider committed a sanctionable violation described in § 890.1061, the notice of proposed sanctions described in § 890.1066 must be withdrawn.

(f) *Disputed material facts.* If the debarring official determines that the administrative record contains a *bona fide* dispute about any fact material to the proposed sanction, he must refer the case for a fact-finding hearing to resolve the disputed fact or facts. The provisions of § 890.1027(b) and (c), 890.1028, and 890.1029(a) and (b) will govern such a hearing.

(g) *Final decision after fact-finding hearing.* After receiving the report of the fact-finding hearing, the debarring official must apply the provisions of paragraphs (c), (d), and (e) of this section to reach a final decision on the provider’s contest.

### § 890.1071 Further appeal rights after final decision to impose penalties and assessments.

If the debarring official’s final decision imposes any penalties and assessments, the affected provider may appeal it to the appropriate United States district court under the provisions of 5 U.S.C. 8902a(h)(2).

### § 890.1072 Collecting penalties and assessments.

(a) *Agreed-upon payment schedule.* At the time OPM imposes penalties and assessments, or the amounts are settled or compromised, the provider must be afforded the opportunity to arrange an agreed-upon payment schedule.

(b) *No agreed-upon payment schedule.* In the absence of an agreed-upon payment schedule, OPM must collect penalties and assessments under its regular procedures for resolving debts